UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

JIAXING SUPER LIGHTING ELECTRIC APPLIANCE CO., LTD., OBERT, INC.	)	Docket No. WA 20-CA-018 ADA
vs.	)	Waco, Texas
CH LIGHTING TECHNOLOGY CO., LTD., ELLIOTT ELECTRIC SUPPLY, INC., SHOAXING RUISING LIGHTING CO., LTD.	)	May 7, 2021

TRANSCRIPT OF VIDEOCONFERENCE MOTION HEARING
BEFORE THE HONORABLE ALAN D. ALBRIGHT

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13:31:35 THE COURT: Good afternoon, everyone. Glad to be back together.

13:31:38 THE CLERK: Hi, Judge.

13:31:41 MR. KUDLAC: Good afternoon, your Honor.

13:31:42 THE COURT: Suzanne, if you would call the case, please.

13:31:44 THE CLERK: Court calls Waco Case 6:20-CV-18 -- I am sorry. I don't know how to pronounce that -- Jiaxing Super Lighting Electric Appliance Company, Et Al vs. CH Lighting Technology Company, Limited. I apologize for butchering that.

13:32:04 THE COURT: Easy for you to say.

13:32:07 THE CLERK: For motion hearing.

13:32:08 THE COURT: If I could hear announcements from plaintiffs' counsel, please.

13:32:14 MR. BERNSTEIN: Good afternoon, your Honor.

13:32:15 Matt Bernstein from Perkins Coie. I have with me some colleagues from Perkins Coie, including Evan Day and Wendy Wang, who will be arguing. I also have some members from my client, Super Lighting. On the line, as well, and, also, our co-counsel, ATIPM.

13:32:31 THE COURT: Thank you very much. And welcome to your inhouse folks and your clients. I appreciate them attending.

13:32:38 Mr. Kudlac.

13:32:40 MR. KUDLAC: Good afternoon, your Honor.

13:32:41 Kevin Kudlac for defendants. With me, I have
13:32:46 Cabrach Connor, David Radulescu, Etai Lahav, Chunmeng Yang
13:32:50 and Jonathan Auerbach.

13:32:55 MR. CONNOR: Good afternoon, your Honor.

13:32:57 THE COURT: Is that a different yellow tie or is
13:32:59 that --

13:33:01 MR. KUDLAC: Different yellow tie for you.

13:33:03 THE COURT: I feel very special that you think
13:33:05 that to not have one but two yellow ties that you could
13:33:08 wear.

13:33:09 At any rate, I'm happy to take up whatever issues
13:33:14 you all have.

13:33:16 MR. KUDLAC: Your Honor, I believe that there are
13:33:18 three pending motions that we briefly discussed or at
13:33:21 least identified last week, and those are defendants'
13:33:25 motion for leave to amend answers and counterclaims with
13:33:28 claims of unclean hands and inequitable conduct that is
13:33:33 ECF 73. We also have a motion to strike final
13:33:38 infringement contentions, which is ECF 83, and a motion
13:33:41 for leave to amend final invalidity contentions, which is
13:33:44 ECF 85. Those have been fully briefed and, your Honor, I
13:33:50 will be addressing all three, and I'm happy to start
13:33:52 wherever you would like. I would submit that the motion
13:33:55 for leave to amend counterclaim might be the most prudent

13:33:58 place to start.

13:34:00 THE COURT: I always want to start with what's
13:34:02 most prudent, so let's do that.

13:34:04 MR. KUDLAC: Thank you, your Honor.

13:34:04 This motion -- in this motion, your Honor, we
13:34:08 seek leave to amend our answers and counterclaims to
13:34:12 assert inequitable conduct and unclean hands with respect
13:34:15 to each of the eight patents-in-suit. And the genesis of
13:34:20 this motion, your Honor, is -- stems from our efforts at
13:34:23 translating and analyzing the 140,000 pages that were
13:34:29 produced around Christmas Eve of last year, and as we
13:34:34 mentioned last week, the vast majority of those are in
13:34:37 Chinese language. And so, that process took a while.

13:34:39 As part of that process, your Honor, what we
13:34:42 discovered was that plaintiffs had engaged in a
13:34:48 corporate-wide or systemic practice of, in the words of
13:34:52 their CEO, turning what is typically considered to be
13:34:56 unpatentable into patents. And that thing that is
13:35:01 considered typically to be unpatentable is the work of
13:35:04 others that already exists and is being sold in the open
13:35:08 market.

13:35:09 What we discovered in poring over these thousands
13:35:13 and thousands of pages of documents is that plaintiffs had
13:35:16 engaged in a program of reverse engineering competitors'
13:35:21 LED tubes, extracting circuitry and designs and then,

13:35:24 filing patent applications using that information and
13:35:28 getting patents that cover those preexisting competitor
13:35:32 tubes.
13:35:33 When you combine those activities with the
13:35:36 directive from the CEO to patent what is unpatentable,
13:35:40 what you have is direct evidence of inequitable conduct
13:35:44 and unclean hands. Now, your Honor, during this
13:35:49 painstaking process of uncovering this program, we found
13:35:51 that every one of the asserted patents is infected by this
13:35:56 prior art patenting process.
13:35:57 The details that we have discovered so far, and I
13:36:03 emphasize so far, which I'll come back to in a moment --
13:36:06 the details we've uncovered so far is set forth in the
13:36:08 proposed amended pleading. More than 150 pages of
13:36:11 detailed analysis of who, what, when, where and how, which
13:36:17 is all what is required, all required by the detailed
13:36:21 pleading requirements of inequitable conduct that forms
13:36:25 the basis of our claims or to be amended claims, your
13:36:30 Honor.
13:36:30 Two examples of the conduct that we discovered
13:36:32 are particularly enlightening as to the scope of this
13:36:35 practice. The first example comes from the
13:36:38 reverse-engineering of a CREE LED tube, and this is
13:36:41 detailed in paragraphs 207 through 210 of the proposed
13:36:45 amended pleading. In August of 2014, the plaintiffs

13:36:50 created a reverse-engineering report on the CREE tube,
13:36:55 which include the details of a filament-simulating circuit
13:36:59 -- or stimulating circuit. Those details included the
13:37:01 specific values of resistors and capacitors found in the
13:37:06 circuits controlling the operation of this CREE 2.
13:37:08 Two months later in October, plaintiffs filed a
13:37:11 Chinese patent application, one of their priority
13:37:14 applications that includes the filament-stimulating
13:37:16 circuit found in the CREE tube down to the matching
13:37:20 resistors and capacitors. That Chinese patent application
13:37:24 is one of the priority documents for four of the patents
13:37:27 being asserted in the case.
13:37:28 Now, plaintiffs did not disclose the CREE tube,
13:37:31 nor the reverse-engineering, nor that the values of those
13:37:34 resistors and capacitors came from somebody else's design.
13:37:38 That reverse-engineering document from 2014 also included
13:37:42 circuit designs for a Philips prior art tube and Howard
13:37:47 LED tubes that were also copied and put into other patent
13:37:50 applications.
13:37:51 The second example, your Honor, comes from the
13:37:54 reverse engineering of what is called a Sunpark 2, and
13:37:58 this is detailed at paragraphs 228 through 258. In this
13:38:03 instance, in about March of 2015, the plaintiffs
13:38:06 reverse-engineered a Sunpark LED tube and extracted
13:38:09 circuitry related to, among other things, what is called a

13:38:12 delay-start circuit that helps to improve the
13:38:16 compatibility of the LED tubes with older fluorescent tube
13:38:20 ballasts. This reverse engineering revealed that the
13:38:22 Sunpark tube had a particular delay-start circuit that
13:38:25 included a particular pair of switches, a symmetrical
13:38:30 trigger diode, and a bidirectional triode thyristor, as
13:38:35 well as particular resistors of particular values.
13:38:37 Three weeks ago, employees of Super Lighting
13:38:39 submitted a conception document, including a delay-start
13:38:43 circuit that has the same two switches and the same
13:38:46 particular resistor value as the Sunpark tube. That
13:38:51 delay-start circuit found its way into six out of the
13:38:55 eight of the asserted patents. That Sunpark tube and
13:38:59 their reverse-engineering efforts were never disclosed to
13:39:01 the patent office. Those are just a couple of examples.
13:39:05 They are more detailed in the amended pleadings, your
13:39:08 Honor. But for a moment, if I could step back and go
13:39:11 through history of how we got here.
13:39:13 The original complaint was filed in January of
13:39:16 2020 and listed four patents. An amended complaint was
13:39:20 filed in March of 2020 and added four patents. So we have
13:39:24 eight patents that are directed to specific circuitry and
13:39:27 designs and or -- of LED tubes. Three days later, on
13:39:34 March 19th, the plaintiffs filed their -- served their
13:39:37 preliminary infringement contentions, which were all

13:39:40 directed to CH-manufactured tubes, and they gave us their
13:39:43 priority claims for the eight patents. And as you'll
13:39:46 recall, the eight patents among them list 70 or so
13:39:50 separate Chinese priority application documents.
13:39:55 Now, we've previously discussed the, at that
13:39:58 time, lack of production of conception and reduction to
13:40:01 practice documents. But on December 24th of last year, we
13:40:05 received 10,000 documents of about 140,000 pages that were
13:40:09 all in Chinese. And we began this painstaking process of
13:40:12 going through them, trying to apply them to the eight
13:40:15 patents and analyzing any of the prior art and reverse
13:40:17 engineering that we then had just gotten a peek into, and
13:40:20 it was then that we first got this look behind the
13:40:23 curtain, if you will.
13:40:24 When we combine that reverse engineering with the
13:40:28 stark absence of conception and reduction to practice
13:40:31 documents, we started to suspect, well, there's something
13:40:33 going on here. And then, that's obviously not a fast
13:40:37 process for 140,000 pages and eight patents. Then on
13:40:41 February 9th of this year, when Super Lighting served its
13:40:44 final infringement contentions, they changed their
13:40:47 inventorship story for five out of the eight asserted
13:40:51 patents. What they did was, they identified different
13:40:55 priority applications for five of those asserted patents.
13:40:58 And that meant they backed up their date of conception or

13:41:03 disclosure, or priority application, or priority, which
13:41:06 meant that what we had done on the same day, our final
13:41:09 invalidity contentions were premised on conception dates
13:41:13 or priority dates that they had just radically changed.
13:41:18 Now, this isn't just changing of dates. It's
13:41:20 changing of an entire inventorship story. And, for
13:41:24 example, for the 479 patent, which is one of the
13:41:27 delay-start patents that I mentioned, in their preliminary
13:41:32 infringement contentions, plaintiffs identified a priority
13:41:35 application from January of 2016, which name three
13:41:37 inventors. When they served their final infringement
13:41:40 contentions, February 9th of this year, they dropped that
13:41:43 claim of priority and asserted an eight-month earlier
13:41:46 claim of priority to April 2015 to a different
13:41:50 application.
13:41:50 But that application didn't name any of the three
13:41:53 inventors from the originally claimed application;
13:41:56 instead, it named three different inventors and also
13:41:59 identified a fourth inventor as anonymous, a practice that
13:42:04 is apparently possible in China. None of these inventors
13:42:08 are named on the 479 patent itself, which lists only two
13:42:11 inventors.
13:42:13 Notably, this earlier application was just weeks
13:42:17 after they had reverse-engineered the Sunpark tube with
13:42:20 the delay-start circuit. There are other examples that

13:42:24 are detailed in our amended pleading where there are
13:42:28 several patents that have -- are directed to or have
13:42:31 claims of priority to Chinese patent applications with
13:42:35 inventors who are not listed on the resulting patents for
13:42:39 which they claim priority.
13:42:41 Now, I mentioned last week, the -- and earlier
13:42:46 today, the 70 different Chinese priority applications. We
13:42:50 asked plaintiffs in a contention interrogatory to have
13:42:53 them identify the support in the priority applications for
13:42:56 the claimed inventions, and they responded on December
13:42:59 24th, at the same time they produced those 140,000 pages.
13:43:02 And their response was simply to give us the numbers of
13:43:05 the priority applications, the ones that they identified
13:43:07 in their preliminary infringement contentions, and then,
13:43:10 six weeks later, they changed them in their final
13:43:13 infringement contentions.
13:43:14 What we see here with all these changed
13:43:18 inventorship and priority claims, frankly, your Honor, it
13:43:23 amounts to a game of 70-card Monte. Keep changing the
13:43:26 story and hiding things and making claims to priority
13:43:29 applications that they simply are not entitled to make
13:43:31 under the law.
13:43:33 I mentioned that our investigation continues,
13:43:36 your Honor. And I would submit that our hearing last week
13:43:40 has already borne fruit, and your Honor's order has taken

13:43:43 effect and had an impact. On May 2nd, plaintiffs produced
13:43:48 216 documents of about 5,500 pages, more than 200 of those
13:43:53 are conception-related documents of invention disclosures,
13:43:57 conception presentations, priority application filings,
13:44:00 and even four notebooks from one of the inventors on four
13:44:04 of the eight patents in the suit.
13:44:08 Couple of days later, a day later, on May 3rd,
13:44:10 the plaintiff produced another 192 documents and about
13:44:15 4,000 pages. All are invention disclosure forms and other
13:44:20 conception-related documents. They made another
13:44:21 production last night, and I'm sorry to say, your Honor,
13:44:24 that I can't tell you exactly what is in there. Not yet,
13:44:27 anyway.
13:44:28 But suffice it to say, that given the fact that
13:44:30 the inventorship and priority and adequacy of disclosure
13:44:34 had been at issue since our original answer. And the fact
13:44:38 that the amended pleading relies on documents and facts
13:44:41 that have been in plaintiffs' possession since long before
13:44:44 the filing of the case, there is no prejudice to the
13:44:46 plaintiffs in this case for allowing us to amend our
13:44:50 pleadings and to assert inequitable conduct and unclean
13:44:53 hands, based on this patent and practice that we have
13:44:57 discovered since they produced documents starting in
13:45:00 December of 2020.
13:45:02 Thank you, your Honor.

13:45:05 THE COURT: Mr. Bernstein.

13:45:13 MR. BERNSTEIN: My apologies, your Honor. It's going to be Ms. Wang arguing this.

13:45:17 THE COURT: Very good. Ms. Wang.

13:45:19 MS. WANG: Hello, your Honor. Good afternoon. Wendy Wang on behalf of the plaintiff.

13:45:24 I will be addressing defendants' motion for leave to amend answers and counterclaim.

13:45:29 THE COURT: Ms. Wang, is this the first time you've appeared in front of me?

13:45:34 MS. WANG: No. This is not the first time. I appeared on another case for the forum non conveniens motion. I don't know if you recall.

13:45:42 THE COURT: I've had a few of those, but you're certainly welcome back. I did not recall that. But I just wanted to welcome you in my courtroom. I appreciate you being here.

13:45:53 MS. WANG: Thank you so much.

13:45:56 So defendants' argument directly went into the details of the inequitable conduct allegation, but the prerequisite of their motion is a showing of diligence. And this is the key flaw in defendants' motion. This motion was filed over two-and-a-half months late. So really, after the deadline, the motion for leave to amend is the request to ask the Court to modify the scheduling

13:46:25 order.

13:46:26 And the Fifth Circuit sets forth four factors for
13:46:30 this type of motion to amend: Diligence, the importance
13:46:33 of the amendment, prejudice to the nonmoving party, and a
13:46:38 continuance, whether that's necessary. Among these four
13:46:42 factors, the most important factor is a showing of
13:46:45 diligence. The law requires the moving party to show that
13:46:50 it could not reasonably have met the deadline, despite its
13:46:54 diligence. But here, defendants cannot meet their burden
13:46:58 of showing diligence.

13:47:00 So I'm going to share my screen and show the
13:47:02 Court a timeline of relevant events. Is the Court able to
13:47:23 see the timeline?

13:47:26 THE COURT: Yes, ma'am.

13:47:27 MS. WANG: Thanks.

13:47:30 So looking at the timeline, this case was filed a
13:47:33 year ago -- over a year ago, on January 10th of 2020. The
13:47:40 privilege log shows that CH was aware of this litigation
13:47:45 ten days later and discussed with counsel, but CH avoided
13:47:51 service and did not accept service until ten months later,
13:47:56 shown here, November 12th, 2020. So there was a ten-month
13:48:02 delay here. And four days later, around the same time, on
13:48:06 November 16th, 2020, 18 of the 22 documents defendants
13:48:11 rely on in their motion were produced to defense counsel
13:48:15 in a parallel case in which defense counsel was

representing CH's interests.

And then, after CH finally accepted service, CH appeared and served document requests. And Super Lighting produced essentially the same documents, 20 of the 22 documents, including the reverse-engineering report and the prior art references at issue here, on November 24th, 2020. So notably, November 24th was the first day when the discovery responses were due. So essentially Super Lighting produced documents the same day they were due.

The deadline to amend pleadings was January 14th. So to the extent defendants complained there was too short of a time between December 24th and the deadline to amend pleadings, it was a result of CH's own making. They had ten months before this to participate in this litigation, to serve discovery requests, and to review documents that they did not.

And also, we're looking at about a two-month window where defense counsel were aware of those documents, and they should have brought the motion before the deadline. Well, what if they couldn't meet the deadline? They could have asked the Court for an extension, but they did not and they let the deadline pass.

So around the same time, January 19, defense counsel deposed a Single Lighting witness on the same

13:49:59 document in the parallel case. So at that time,
13:50:04 defendants studied the documents, were aware of them, and
13:50:08 they should have brought the motion then, but they did
13:50:12 not. It was not until March 25th. It was two months --
13:50:17 over two months after the deadline that defendants finally
13:50:21 bring the motion to amend the counterclaim.
13:50:31 So also, I would like to address the change of
13:50:34 priority claims so that here, happened in February, early
13:50:40 February, that doesn't really have anything to do with the
13:50:43 underlying motion to amend to add inequitable conduct to
13:50:48 counterclaim because, again, defendants had those
13:50:51 documents at least as of December 24th, 2020.
13:50:58 So it's plaintiffs' position that the motion
13:51:01 should be denied for this reason alone because if you look
13:51:04 at the case law, diligence is the prerequisite. If they
13:51:08 don't meet the diligence requirement, the motion should be
13:51:10 denied. And we're one month away from the fact discovery
13:51:16 cutoff, and the Court should consider defendants'
13:51:18 repetitive delays in this case.
13:51:21 So initially, they had plenty of time, ten
13:51:25 months, to really show up and defend themselves and they
13:51:27 did not. And as the Court knows, we appeared in front of
13:51:33 the Court last week about the request to schedule
13:51:39 depositions, among other things, and the parties will be
13:51:44 very busy conducting depositions in the next month.

13:51:47 Really, filing these fact-intensive, yet, baseless motions
13:51:52 late in the game really effectively delays the trial
13:51:55 schedule. And plaintiffs respectfully request the Court
13:51:59 to deny defendants' motion.
13:52:02 So with respect to the materiality point, the
13:52:09 legal standard for inequitable conduct is that defendants
13:52:12 have to meet their burden to show plaintiffs' specific
13:52:18 intent to make a material misrepresentation or omission to
13:52:21 the PTO.
13:52:24 So the basis for the defendants' motion was the
13:52:29 reverse-engineering report and the prior art references in
13:52:32 those reverse-engineering reports. But those -- as we
13:52:36 talked about, defendants knew about those references
13:52:40 before February 9th, but they did not chart most of these
13:52:45 references in their final invalidity contentions. So if
13:52:49 they were material, defendants should have included them
13:52:53 in their final invalidity contentions. So logically,
13:52:55 defendants conceded that these references are not
13:52:59 material.
13:53:02 And about the statement of patenting what's not
13:53:06 patentable, that doesn't come directly from the CEO. It
13:53:11 was in Super Lighting's internal meeting notes created by
13:53:15 a staff member, and that doesn't really show any specific
13:53:18 intent to defraud the patent office. While that
13:53:24 particular statement has multiple other interpretations,

13:53:29 but the heightened pleadings standard requires the
13:53:32 specific intent to defraud to be the single most
13:53:36 reasonable inference to be able to be drawn from the
13:53:40 evidence. But this is not the case here.
13:53:47 So as to the third and the fourth factor,
13:53:50 prejudice, I already addressed that this is already late
13:53:53 in the game, and discovery will close in a month. So
13:53:57 adding these claims really late in the game will be very
13:54:01 prejudicial and will drive up the cost of this litigation.
13:54:06 And on the fourth point, I guess both parties
13:54:09 agree that we don't need a continuance. So we're, you
13:54:13 know, heading up to the depositions and we're getting
13:54:15 ready for trial. So we don't need a continuance, and we
13:54:19 respectfully request the Court to deny the motion to
13:54:23 amend. Thank you, your Honor.
13:54:26 THE COURT: Let me ask you this. If I were to
13:54:29 allow the motion to amend, are you saying you still don't
13:54:32 -- would not need any additional discovery? And by that,
13:54:37 I mean the plaintiff.
13:54:41 MS. WANG: Well, it's really defendants' motion
13:54:43 and they bear the burden of proof. We would not need an
13:54:48 extension.
13:54:51 THE COURT: Okay. And maybe I'm missing this.
13:54:57 Mr. Kudlac, are you asking for an extension?
13:55:02 MR. KUDLAC: We are not, your Honor.

13:55:03 THE COURT: Okay. I thought that's what counsel said. And I think she finished, so if you'd like to respond, you're welcome to do so.

13:55:10 MR. KUDLAC: Yes, your Honor.

13:55:11 Briefly a few things. First, all three defendants are seeking a continue -- are seeking to amend their answers and counterclaims, not just CH -- not just the Chinese-based defendants that did not appear until late. And the lateness of appearance doesn't have anything to do with this. As you'll recall, our Markman hearing was approximately October 22nd, which means discovery doesn't open until after that.

13:55:37 So we were diligent in getting discovery out. And the fact that in a different proceeding with a different protective order, we were exposed to information, and the suggestion that we should have taken that information and used it here is to tell us that we should have violated a protective order and filed a motion sooner.

13:56:00 As to diligence, your Honor, 140,000 Chinese-language documents that were extraordinarily technical and needed to be applied across eight different patents. I think that, your Honor, common sense dictates that takes time. It takes time not only from people that can translate the documents but from people that can

13:56:21 analyze the then-translated documents.

13:56:27 Another point, your Honor, they have failed to --
13:56:32 plaintiffs' counsel failed to address our amendment to
13:56:35 assert unclean hands, which is a different count and a
13:56:39 different requirement, different standard than inequitable
13:56:43 conduct. And even on the inequitable conduct, we have
13:56:46 pled everything that we are required to plead. We have
13:56:50 pled materiality, we have pled specific intent: and that
13:56:53 specific intent arises from at least the false
13:56:59 declarations by the inventors who are named on the
13:57:01 patents, who it is demonstrable did not invent the subject
13:57:07 matter claimed in those patents.

13:57:14 Finally, with respect to the -- again, one more
13:57:17 point on the diligence, your Honor. They produced 140,000
13:57:20 Chinese-language documents on December 24th. The deadline
13:57:23 to amend pleadings was January 14th. The suggestion is
13:57:28 that we were -- we would be able to translate, analyze,
13:57:33 apply 7,000 pages a day. You and I can remember, that's
13:57:40 more than two-and-a-half boxes of documents every single
13:57:45 day to eight -- across eight patents.

13:57:48 And the reference to the other proceedings also
13:57:52 points out -- I would point out, there are no overlapping
13:57:55 patents between that case and this case. And with that,
13:57:59 your Honor, I think I have discussed everything.

13:58:04 THE COURT: Thank you.

13:58:06 A response?

13:58:07 MS. WANG: Thank you, your Honor.

13:58:08 So about the alleged violation of the protective
13:58:12 order, while it was the same party at issue here was Super
13:58:18 Lighting, the plaintiff, so defendants had those
13:58:23 documents. They -- defense counsel had those documents
13:58:25 and they knew about them, and they took Mr. Zhon's
13:58:30 (phonetic) deposition, who is the Super Lighting witness
13:58:32 in that parallel case. So essentially they had two months
13:58:37 to analyze those documents.

13:58:39 And really, the bottom line is if, you know,
13:58:44 you're trying to finish your homework, and if you can't do
13:58:46 it, you ask your professor whether you can get an
13:58:48 extension. Sometimes you do, sometimes you don't, but you
13:58:52 need to ask. Defendants did not really seek an extension
13:58:55 here and they let the deadline pass. It's a court-set
13:59:02 deadline and the law says you have to show diligence, and
13:59:05 you should show that you could not reasonably have met the
13:59:08 deadline, despite your diligence. And that is what
13:59:12 defendants' key flaw here is in the motion.

13:59:19 THE COURT: Mr. Kudlac, any response to that?

13:59:22 MR. KUDLAC: No, your Honor. I think we've
13:59:24 detailed our diligence fairly well.

13:59:26 THE COURT: Okay. Let's move on, then, to the
13:59:28 next issue.

13:59:31 MR. KUDLAC: Your Honor, I would, with your
13:59:33 permission, go slightly out of order, at least with
13:59:35 respect to the ECFs, and turn next to the motion for leave
13:59:40 to amend our invalidity -- our final invalidity
13:59:45 contentions and that is ECF No. 85. And, your Honor, this
13:59:55 also derives from the same, if you will, change of
14:00:02 invalidity -- or change of priority claims and the late --
14:00:06 or the production of documents in December of 2000.
14:00:11 What we had, as I detailed earlier, was a change
14:00:14 with respect to the priority dates for five of the eight
14:00:20 patents. And the impact of that was, some of the prior
14:00:24 art that we had relied on, that we had charted in our
14:00:27 final invalidity contentions was based on the previous
14:00:30 claims from the preliminary infringement contention and
14:00:35 their responses to interrogatories in December of 2020.
14:00:39 So we relied on those original priority claims as
14:00:42 the date that we had to beat with our prior art. And
14:00:46 then, on the date of their final infringement contentions,
14:00:48 they changed that. They pulled the rug right out from
14:00:51 under us and we had to go -- we have to go back to the
14:00:53 drawing board on at least five of the eight patents.
14:00:57 And because these patents are interrelated, as
14:00:59 you know, strategically, because we're going to have to
14:01:02 reduce the number of references that we rely upon for
14:01:07 trial and they're going to have obviously reduced claims,

14:01:10 we have to come up with a body of work, a body of prior
14:01:16 art that can, as best as possible, span all of those eight
14:01:19 patents. And what we are trying to do here, your Honor,
14:01:21 is simply respond to their changed priority claims with
14:01:26 new charts and supplemented charts that are based on the
14:01:31 information that we got from that December 2020 production
14:01:35 and based on the changed priority claims as of February
14:01:40 9th of this year.
14:01:46 THE COURT: Were you done?
14:01:48 MR. KUDLAC: Yes, your Honor. I think that
14:01:49 summarized it. You've heard all the other stuff before,
14:01:52 so I didn't think I should go over that again.
14:01:54 THE COURT: I'm not sure who will be speaking on
14:01:55 behalf of the plaintiff. Ms. Wang or someone else?
14:01:58 MS. WANG: It will be me again, your Honor.
14:02:00 Thanks. I will share my timeline again.
14:02:16 So again, before we get into the merits -- the
14:02:22 substantive prior art references, again, the prerequisite
14:02:25 is diligence as required by Fifth Circuit case law. So
14:02:31 here, as we just discussed, defense counsel had these
14:02:35 documents as of November 16th. And these documents are
14:02:40 produced again in this case on December 24th, yet,
14:02:46 defendants' motion for leave to amend the final invalidity
14:02:49 contentions was even later.
14:02:52 So as the Court can see, there was a four-month

delay for defendants to file their motion to amend the invalidity -- final invalidity contentions. And defendants again used these documents in January. So they should have included these prior art references in their final invalidity contentions on February 9th of 2020, but they did not.

And also, on March 5th of 2021, defendants wrote a letter to plaintiffs' counsel showing the first time their intent to amend the final invalidity contentions. And the parties had a meet-and-confer and as the Court often expects the parties to do to work things out. So we told defendants' counsel, if you would like to add certain references, please get back to us and let us know what you would like to add and maybe we could work things out. Then it was silent. We didn't hear anything from defense counsel until April 16th about this issue.

So defendants filed a motion to amend without really telling us what prior art references they sought to add. So again, they didn't meet the burden to show diligence. There was no diligence. The Court should deny this motion based on that alone.

As to the change of priority claims, so again, the change of priority doesn't change the fact that defendants knew about these documents as of November 16th, at least here in this case, December 24th as the

14:04:35 reproduction of these documents in this particular case.
14:04:39 And also, the priority claims for three of the eight
14:04:42 patents remained the same, so there's no basis for
14:04:46 defendants to amend the invalidity contentions on the
14:04:48 three patents.
14:04:50 And also, as a further illustration, this is on
14:04:54 page 7 of plaintiffs' opposition to defendants' motion to
14:04:59 amend the invalidity contentions. So the old priority is
14:05:04 here and on February 9th, defendant -- plaintiff moves up
14:05:11 five of the eight patent priority claims. So any diligent
14:05:16 prior art search previously would have necessarily covered
14:05:20 the prior art in this timeframe.
14:05:24 So with that -- and also, on the prejudice and
14:05:27 the continuation point, I think we addressed those, and we
14:05:29 don't need to repeat them here. So the Court should deny
14:05:33 defendants' motion for leave to amend the invalidity
14:05:36 contentions. Thanks, your Honor.
14:05:38 THE COURT: I'm not sure I follow that -- keep
14:05:40 that screen up.
14:05:41 MS. WANG: Yes.
14:05:42 THE COURT: I'm not why -- are you saying that
14:05:45 the priority dates are so close that any search that would
14:05:49 have been done to find art for the old priority date would
14:05:53 have captured stuff for the new priority date, which is
14:05:58 earlier?

14:05:59 MS. WANG: Yes. Correct, because they were
14:06:02 called before that. So it would be the reverse, right?
14:06:04 So if we have the old priority here, defendants would have
14:06:09 missed this period of prior art. But here, we're moving
14:06:14 the new priority date earlier, which means their prior
14:06:18 search should have covered the entire time period.
14:06:21 THE COURT: Yeah, but don't they now have to
14:06:23 start over and figure out what art -- I mean, I get what
14:06:27 you're saying, but if you think -- if you have the old
14:06:33 priority date and you're thinking okay, I've got these
14:06:37 three pieces of art that are killer pieces of art that
14:06:41 qualify under the old priority date and now that -- those
14:06:45 three have been killed by the movant back to new priority,
14:06:51 I get that they may have found the art, but, you know,
14:06:58 they might not have given it the same weighing or why
14:07:01 would they?
14:07:02 MS. WANG: Yeah, that -- we acknowledge that.
14:07:07 But at least for the three patents that haven't been
14:07:12 changed the priority dates, there's no impact on that.
14:07:19 THE COURT: Okay. And I interrupted you. Were
14:07:21 you done?
14:07:22 MS. WANG: Yes. Thanks, your Honor.
14:07:26 THE COURT: Mr. Kudlac.
14:07:27 MR. KUDLAC: May I respond briefly?
14:07:29 THE COURT: Oh, of course.

14:07:30 MR. KUDLAC: Thank you.

14:07:31 With respect to the documents from the other
14:07:34 case, the MaxLite case, if you will, we had asked in this
14:07:39 case if we could consider all of the documents that they
14:07:41 had produced in that case as cross-produced and
14:07:45 essentially come to a cross-use agreement. They refused.
14:07:49 So this notion that we should have known or could have
14:07:51 used those documents is a red herring.

14:07:55 Your Honor was exactly right with respect to the
14:07:59 priority dates changing. As your local rules require, we
14:08:04 were going to have to come down to certain number of
14:08:07 references or grounds that we could go forward at trial.
14:08:10 And so, when we did our preliminary and final invalidity
14:08:15 contentions, we had to pick and we did. And then, the
14:08:20 ground changed beneath us, and that is the reason that we
14:08:23 should be allowed to amend, not just for the five but for
14:08:26 all eight, because of the interrelationship and the
14:08:30 limited use of prior art references, which is a trial
14:08:35 practicality matter, your Honor.

14:08:38 THE COURT: You had me until you -- I'm not sure
14:08:43 why the dates should move for the three where the priority
14:08:49 date has not changed.

14:08:50 MR. KUDLAC: It's because, one, the relationship
14:08:52 of the patents to each other and the fact that we're going
14:08:55 to have necessarily limited number of references or

14:08:59 grounds that we can assert at trial. The calculus changes
14:09:04 with all of the priority date changes with respect to the
14:09:08 five because, say, for those five, we have to change which
14:09:12 references we have to use; then that increases the number
14:09:17 of references that we may have to use or changes them
14:09:20 dramatically with respect to those five, and thus limits
14:09:23 what we would be able to use for the other three.
14:09:25 But if some of those references that are new
14:09:28 references that we have to use because of the changed
14:09:31 priority for the five are just as good for those other
14:09:34 three, then strategically and practically, it would make
14:09:39 sense for us to add those references for those other three
14:09:42 that didn't have changed priority dates so that when we
14:09:45 get to expert reports and trial, we have fewer references
14:09:49 that we have to present to a jury, less confusion, more
14:09:53 streamlined. That's the practical matter, your Honor.
14:09:58 THE COURT: Any response to that, Ms. Wang?
14:10:03 MS. WANG: Two responses. First of all, we did
14:10:07 produce those documents used in the parallel case in the
14:10:11 Central District of California. There was a month in
14:10:16 between; the reason is, it took coordination between two
14:10:19 law firms. And also, more importantly, we asked
14:10:25 defendants in early March what art they would like to add,
14:10:30 and there was no response. So this is not about, you
14:10:33 know, adding meritorious art. And it was significantly

14:10:37 delayed so the Court should deny the motion.

14:10:45 THE COURT: Any opinions to that? Or do you want
14:10:47 to move on to the final issues?

14:10:49 MR. KUDLAC: We can move on to the final issue,
14:10:51 which is the motion to strike a portion of the final
14:10:54 infringement contentions, your Honor.

14:10:55 THE COURT: Okay.

14:10:56 MR. KUDLAC: And this one will be even briefer, I
14:11:00 believe. As your Honor knows, this case as it started off
14:11:04 was with respect to tubes that were exclusively
14:11:09 manufactured by CH and redistributed by Elliott. But
14:11:15 exclusively products manufactured by CH. And no other
14:11:20 products were named in the preliminary infringement
14:11:23 contentions.

14:11:23 A year later, when we get to the final
14:11:25 infringement contentions, the plaintiffs added tubes that
14:11:29 were manufactured by GE and ESL. Not manufactured at all
14:11:35 by CH. CH has nothing to do with them with respect to the
14:11:40 tubes that were identified in the final infringement
14:11:43 contentions. Only CH -- or only Elliot had something to
14:11:47 do with them as a redistributor or reseller of those
14:11:50 tubes.

14:11:50 And so, we are now faced with a situation where
14:11:55 contrary to the other situation, CH doesn't have control
14:12:00 of or possession of the schematics other than the limited

14:12:04 number of schematics that were apparently obtained by
14:12:08 reverse engineering by the plaintiffs and included in the
14:12:10 final infringement contentions. We don't have any other
14:12:12 details other than potentially publicly available
14:12:15 information.
14:12:17 On top of that, the theories have changed. These
14:12:21 are -- many of these patents are circuitry-related patents
14:12:24 and rely on particular chips that are in the accused
14:12:28 products. The chips that are in the GE and ESL products
14:12:32 are different than the chips that are in the CH products.
14:12:36 And so, obviously, very difficult to get full
14:12:40 understanding of those products, and necessarily the
14:12:44 theories of infringement change because we're talking
14:12:46 about the operation of different products and circuitry
14:12:49 contained within different chips in those different
14:12:51 products.
14:12:53 As to diligence, your Honor, which we should look
14:12:58 at with respect to the plaintiffs here and why we didn't
14:13:01 have notice of these additional products earlier. Their
14:13:06 explanation is, well, we didn't buy them until November
14:13:09 and we added them in February, and that's diligent. I
14:13:13 mean, it only took us three months. That's their
14:13:16 position.
14:13:16 But, your Honor, they could have purchased these
14:13:18 products more than a year before. They could have

14:13:20 purchased them before they filed the case. They could
14:13:23 have purchased them before they did their preliminary
14:13:26 infringement contentions, but they didn't. And I submit
14:13:29 that was probably a strategic choice on their behalf,
14:13:33 given the vast size of their reverse-engineering efforts.
14:13:39 They could have and they didn't come forward and say we
14:13:42 didn't know about these products until November. They
14:13:44 only said, we didn't buy them until November.
14:13:47 And I submit that the standard ought to be
14:13:49 determining diligence from when you knew about the
14:13:52 products and whether you were diligent about figuring out
14:13:54 whether they infringed. They have said nothing in their
14:13:59 papers that they didn't know about these products. They
14:14:02 didn't tell us anything about when they first found out
14:14:04 about these products. All they told us was they first
14:14:07 purchased them back in November. That, I submit, your
14:14:11 Honor, is not good enough. That's not the standard.
14:14:16 So what we have is late-added products from
14:14:19 different manufacturers that are not parties and who have
14:14:21 not produced documents in this case yet. They have been,
14:14:25 I understand, subpoenaed by the -- by the plaintiffs to
14:14:29 produce documents. But it's my understanding that we have
14:14:31 not received those documents unless they were in the
14:14:34 documents that we just received last night.
14:14:36 So I submit this is the type of situation where

there has been no diligence. They waited and sprung these document -- these tubes on us on the last day to amend their infringement contentions and have showed no diligence in further -- or reason for their delay to add them to the case. Accordingly, your Honor, defendants submit that the allegations against the GE and ESL-manufactured tubes that have been added on the final infringement contentions should be stricken.

THE COURT: Anything else?

MR. KUDLAC: No, your Honor. Thank you.

THE COURT: And anything else for the plaintiff?

MR. DAY: Yes, your Honor. Evan Day from Perkins Coie for plaintiffs. I'll be addressing this motion.

THE COURT: Okay.

MR. DAY: So, first of all, you know, as we stated in our motion, Mr. Kudlac stated several times and emphasized the word "exclusively." There's never been -- we've never stated anything like that. I'm sure you're aware, the naming of products in the complaint is typically done on an exemplary basis in this district and in most others.

Now, I don't think there is any dispute that the number of products that are at issue in this motion are a small fraction of the total number of products in this case. I think Mr. Kudlac emphasized that himself. But,

14:15:58 you know, I heard Mr. Kudlac talking about what the
14:16:03 standard ought to be. And now, I don't want to argue
14:16:06 about what the standard is because I think the order
14:16:09 governing proceedings is fairly clear.
14:16:14 But we went based on what the order governing
14:16:17 proceedings actually says, and that order provides a final
14:16:22 infringement and invalidity deadline. It has exactly the
14:16:26 same standard for both. Now, we -- after serving the
14:16:30 initial contentions, which they are not raising any issue
14:16:34 with, but the preliminary contentions, we and Super
14:16:39 Lighting continued to investigate and identified
14:16:41 additional products that we believed needed to be torn
14:16:45 down, reverse-engineered; and based on those, we found
14:16:48 evidence of similar infringing features in those products.
14:16:56 And, you know, we were very diligent in preparing
14:17:00 our initial contentions, continued to research the issue
14:17:02 and found those additional products. And our
14:17:07 understanding of the order governing proceedings is that
14:17:10 falls within what the order governing proceedings
14:17:13 contemplates. And the defendants treated it exactly the
14:17:17 same way in their invalidity contentions. Defendants'
14:17:21 final invalidity contentions added -- they added
14:17:25 additional products, they added additional patents.
14:17:26 And now, there is a response to that in the
14:17:30 defendants' reply, which I want to address briefly, and

14:17:34 there is a bit of an overlap between motions here. But
14:17:38 one issue with -- one problem with their response, which I
14:17:43 think the defendants put in a footnote in their reply, is
14:17:47 that some of the added products had -- their response is
14:17:50 that, well, we added invalidity contentions because of new
14:17:52 production that they got from us. Some of their added
14:17:56 products have nothing to do with that.
14:17:58 So, for example, there's an additional Keystone
14:18:00 product that's cited on -- that's cited in their
14:18:06 invalidity contentions that was newly added in the final
14:18:09 contentions. So defendants treated this the same way.
14:18:11 Now, where there's an overlap between these motions is
14:18:15 that, you know, when Mr. Kudlac started talking about the
14:18:22 -- their motion to -- for leave to amend the complaint, he
14:18:25 started talking about the -- a Sunpark tube.
14:18:32 So if you'll give me a moment, your Honor. And
14:18:40 if I can -- actually, I apologize. I'm having difficulty
14:18:47 sharing my screen, but this is on page 8 of our -- on
14:18:58 Exhibit 5, which is the defendants' final invalidity
14:19:02 contentions served in -- they served back in February,
14:19:05 there's that Sunpark tube showing up.
14:19:07 So the problem with that for their diligence
14:19:12 argument on the motion for leave to amend the contentions
14:19:15 is that if they're saying it took us months to translate
14:19:19 all these Chinese documents, that why is this showing up

14:19:23 in our contentions in February? They obviously knew about
14:19:25 this much earlier than they brought it to the Court.
14:19:28 So going back to the motion to -- going back to
14:19:32 their motion to strike, now, Mr. Kudlac spoke about
14:19:38 prejudice. Now, the amount of time that was left to the
14:19:42 case when these were served, they had nearly five months
14:19:46 before their rebuttal infringement expert report would
14:19:50 have been due on to the original schedule and now that the
14:19:54 -- your Honor has moved the fact discovery deadline, the
14:19:58 parties have agreed on a -- an amended timeline for expert
14:20:02 reports that will put that -- their rebuttal expert report
14:20:07 on July 12th. More than five months after those final
14:20:11 infringement contentions. And we don't believe that
14:20:14 they've identified anything in their motion to say that
14:20:20 that's an adequate amount of time to prepare a defense to
14:20:23 this.
14:20:28 So the arguments that are being made here, you
14:20:31 know -- so, first of all, you know, how long does it take
14:20:34 to conduct a teardown? And we identified two
14:20:36 representative products. A lot of the others are simply
14:20:43 color temperature variations, you know, of the same
14:20:46 products. So, you know, if you have a new iPhone that
14:20:48 comes out and has a -- you know, has a black case and a
14:20:53 silver case and a white case, you don't -- once you tear
14:20:57 down one of them, you don't need to tear down a different

14:20:59 color iPhone to see what the inside looks like. And it's
14:21:02 the same way with these lamp tubes.
14:21:06 In addition to the argument about the responses
14:21:11 to the subpoenas that I understand is basically the only
14:21:16 explanation from defendants for why they waited more than
14:21:21 two months to file this motion, you know, almost two
14:21:25 months just to raise the issue with us at all and then,
14:21:30 another two weeks to file it, there's a lot of problems
14:21:32 with that.
14:21:32 And that just doesn't make sense to me having
14:21:34 been on that side of a case that, you know, as a
14:21:38 defendant, the ways that you respond to a plaintiffs'
14:21:43 case, you know, you don't wait for the plaintiff to get
14:21:46 documents from a third party. That just doesn't make
14:21:49 sense. You either poke holes in the evidence that they
14:21:51 have or you go out and look for your own evidence.
14:21:55 And they haven't submitted anything that says
14:21:56 that they couldn't go out -- you know, if they wanted to
14:21:59 present affirmative evidence to rebut our case, they
14:22:02 haven't presented anything that says they couldn't have
14:22:04 done it in the amount of time between when we served the
14:22:06 initial -- or, excuse me, when we served the final
14:22:11 infringement contentions and the close of fact discovery
14:22:12 or when expert reports would have been due.
14:22:16 And, you know, the other problem with relying on

14:22:20 the subpoenas to the GE and ESL is that that -- the
14:22:26 causation there runs both ways. You know, it's not
14:22:29 uncommon for targets of subpoenas in litigation to drag
14:22:34 their feet a little bit. I'd say, if anything, that's
14:22:36 more common than compliance on the earliest day. But part
14:22:42 of the reason that both of these parties, GE and ESL, who
14:22:46 both now haven't produced technical documents, one of the
14:22:49 reasons that both of these parties gave was the fact that
14:22:51 defendants were planning to file this motion and the --
14:22:57 and as I explained in the declaration that's submitted
14:23:00 with our opposition, that -- we got that explanation from
14:23:03 both GE and ESL, even before defendants had filed their
14:23:08 motion.
14:23:10 So the result of that, of defendants waiting this
14:23:14 long to bring this issue to the Court and resolve it is,
14:23:18 it's interjecting confusion in the case not just for us
14:23:20 but for some of the third parties. And finally, even if
14:23:26 we don't get -- you know, we certainly expect to get
14:23:29 technical documents from both GE and ESL, but if we don't,
14:23:33 you know, we have the burden of proof. That's our
14:23:37 problem.
14:23:37 And if, you know, we think that there's other --
14:23:41 there's certainly other information that proves
14:23:42 infringement, mostly the teardowns because that is far and
14:23:46 away the most relevant evidence here. But if we don't

14:23:49 have -- you know, if we don't have enough to prove it,
14:23:51 that's our -- you know, that's our problem. It doesn't
14:23:53 make sense to argue that we have to wait for this motion
14:23:57 just to see how much evidence we have.
14:24:00 So in our view, in view of those things, in view
14:24:04 of the fact that the defendants were -- you know, that the
14:24:09 accused products are basically two series of tubes that
14:24:13 they've had half a year to look at and that they were not
14:24:16 diligent in bringing this motion, the plaintiffs
14:24:19 respectfully request the defendants' motion be denied.
14:24:23 THE COURT: Any response?
14:24:27 MR. KUDLAC: We found out about these tubes and
14:24:29 their allegations against these tubes in February, so I
14:24:32 have not a clue as to what Mr. Day is referring to when he
14:24:35 said we've had six months or half a year to look at these
14:24:39 tubes. I think maybe he's just saying that we will have
14:24:43 had six months to look at them by the time we would serve
14:24:48 our rebuttal non-infringement reports.
14:24:50 To one of Mr. Day's points that apparently the
14:24:54 only difference amongst the newly accused tubes is color,
14:25:01 his comparison to the color of a casing of an iPhone is
14:25:06 rather dramatically inept. The color that he's talking
14:25:10 about is the color that is generated by the LEDs and the
14:25:14 way that it generates what is put out for people to, I
14:25:19 don't know, read by.

14:25:20 But it's not simply -- it's not the color of the
14:25:24 tube. It's not whether the tube is red, white or blue.
14:25:28 It's the color of light that is generated by the circuitry
14:25:32 in the tubes themselves, and that has to do with the chips
14:25:38 that are in them and all of the LEDs that are in them, and
14:25:43 those are different than the previous products that are
14:25:46 manufactured by CH that they had previously accused.
14:25:50 Finally, your Honor, the time for diligence isn't
14:25:56 with respect -- necessarily with respect to us bringing
14:25:59 the motion. And I submit that we were diligent in
14:26:02 bringing the motion as we were doing meet-and-confers,
14:26:05 many, many, meet-and-confers over the last couple of
14:26:07 months. But the time for diligence was with respect to
14:26:10 the plaintiffs amending their infringing contentions. And
14:26:14 there was a year that went by before they -- or nearly a
14:26:18 year that went by before they amended their invalidity --
14:26:21 or infringement contentions, and that was merely by the
14:26:24 filing of their final infringement contentions.
14:26:27 They did -- they never supplemented nor amended
14:26:31 them in that 11-month span. And we still have not heard
14:26:36 when Super Lighting or plaintiffs' counsel first found out
14:26:41 about these tubes. So I submit that they have not
14:26:45 demonstrated diligence in amending their infringement
14:26:50 contentions to add these tubes from other manufacturers,
14:26:53 and the allegations against them should be stricken.

14:26:56 Thank you, your Honor.

14:27:06 THE COURT: I'm sorry. A response?

14:27:08 MR. DAY: Just very briefly. I do want to clarify that, yes, you know, we're including the time that has passed since we served the final contentions and the time that defendants still have to respond with respect to, you know, whether there's adequate time for them to -- defendant to prepare a response.

14:27:27 And I would add that we informed them these products were going to be at issue on the first day of fact discovery in November. And nothing further on that from plaintiffs.

14:27:41 THE COURT: Mr. Kudlac, anything else?

14:27:45 MR. KUDLAC: No, your Honor. Thank you.

14:27:46 And, Mr. Day, thank you for that clarification.

14:27:48 THE COURT: Anything else we need to take up?

14:27:53 MR. KUDLAC: I am not aware of anything, your Honor, but I would -- I should listen to my co-counsel out there just to make sure I don't mess up again.

14:28:02 MR. RADULESCU: You didn't mess up at all the record today.

14:28:06 MR. KUDLAC: Thank you, sir.

14:28:09 THE COURT: At least he didn't say "for a change" at the end of that. So very well done.

14:28:15 Anything else from counsel for plaintiff?

14:28:21 MR. BERNSTEIN: Nothing, your Honor, for the
14:28:23 plaintiffs.
14:28:23 THE COURT: Okay. Very good.
14:28:25 I will work on this over the weekend and early
14:28:27 next week, and we'll get something out to you very early
14:28:30 next week. We'll get rulings on these made so that you
14:28:32 all know what you're doing. I definitely want to take the
14:28:36 time to think about these issues and not just rule on them
14:28:39 off the top of my head. But I very much appreciate the
14:28:43 arguments that were made and the quality of the lawyers
14:28:46 that were -- that this week come. As usual, patent cases
14:28:52 tend to have lawyers that are truly exceptional in the way
14:28:56 they handle things. This was no different.
14:28:58 Have a good weekend. Be safe out there. And
14:29:01 we'll get something to you -- what we may very well do is
14:29:06 get you essentially a -- sort of just a -- maybe a gavel
14:29:13 ruling on them, and if we feel like we need to do anything
14:29:15 additional in terms of justification, or an order, or
14:29:19 something we want the public to see, we'll get to work on
14:29:21 that and get that out a little bit later. Because I know
14:29:25 with where you all are at, time is of the essence. So we
14:29:28 will get -- we will get you rulings very early next week.
14:29:32 It may not be as robust an order as maybe coming later in
14:29:36 time.
14:29:36 Take care, everyone. Be good. Thank you.

14:29:40 MR. RADULESCU: Thank you, your Honor.

14:29:41 MS. WANG: Thank you, your Honor.

MR. BERNSTEIN: Thank you, your Honor.

(Proceedings concluded.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

I, LILY I. REZNIK, Certified Realtime Reporter, Registered Merit Reporter, in my capacity as Official Court Reporter of the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

WITNESS MY OFFICIAL HAND this the 23rd day of May, 2021.

/s/Lily I. Reznik
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